

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) MARCH 21, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 7
 DEFENDANT.)
) PAGES 974 - 984

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTERS:

IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074
LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 SAN JOSE, CALIFORNIA

MARCH 21, 2022

2 P R O C E E D I N G S

02:04PM 3 (COURT CONVENED AT 2:04 P.M.)

02:04PM 4 (JURY OUT AT 2:04 P.M.)

02:04PM 5 THE COURT: WE'RE BACK ON THE RECORD IN THE BALWANI
02:04PM 6 MATTER.

02:04PM 7 LET ME ASK COUNSEL TO MAKE YOUR APPEARANCES, PLEASE.

02:04PM 8 MR. SCHENK: GOOD AFTERNOON, YOUR HONOR.

02:04PM 9 JEFF SCHENK AND JOHN BOSTIC ON BEHALF UNITED STATES.

02:04PM 10 THE COURT: THANK YOU. GOOD AFTERNOON.

02:04PM 11 MR. COOPERSMITH: GOOD AFTERNOON, YOUR HONOR.

02:04PM 12 JEFF COOPERSMITH FOR MR. BALWANI WHO WAIVED HIS APPEARANCE
02:04PM 13 TODAY. WE FILED A DOCUMENT.

02:04PM 14 I'M JOINED BY MY COLLEAGUES: AMY WALSH, STEPHEN CAZARES,
02:04PM 15 MOLLY MCCAFFERTY, AARON BRECHER, AND SHAWN ESTRADA.

02:04PM 16 THE COURT: THANK YOU. GOOD AFTERNOON EVERYONE.

02:04PM 17 THANK YOU FOR COMING ON SHORT NOTICE. I JUST WANTED TO
02:04PM 18 UPDATE THE PARTIES. WE'RE NOT GOING TO DO ANYTHING SUBSTANTIVE
02:04PM 19 TODAY, BUT JUST PROCEDURALLY ON THE -- FOR SCHEDULING, AND I
02:04PM 20 THOUGHT I WOULD INFORM YOU WE WERE ON A BREAK. WE TOOK A BREAK
02:05PM 21 BECAUSE OF A JUROR'S SITUATION, AND I'M INFORMED THAT THAT
02:05PM 22 JUROR REPORTED THIS MORNING TO OUR CRD AND APPARENTLY HAD A
02:05PM 23 FEVER, SORE THROAT. AND THAT'S THE LAST THAT WE HEARD.

02:05PM 24 I THINK THAT WAS THIS MORNING?

02:05PM 25 THE CLERK: YES.

02:05PM 1 THE COURT: YES.

02:05PM 2 I SHOULD ALSO INDICATE THAT THIS, THIS JUROR HAD TRAVEL
02:05PM 3 PLANS APRIL 6TH THROUGH THE 8TH IF YOU RECALL. I THINK THAT'S
02:05PM 4 CORRECT.

02:05PM 5 (PAUSE IN PROCEEDINGS.)

02:05PM 6 THE COURT: I HAD INTENDED TO BE AVAILABLE -- I
02:06PM 7 THINK WE WERE DARK THE 7TH AND THE 8TH PREVIOUSLY, AND I'VE
02:06PM 8 MADE SOME ADJUSTMENTS TO MY SCHEDULE THAT I WILL BE HERE ON THE
02:06PM 9 7TH AND 8TH.

02:06PM 10 BUT LET ME GET BACK MORE IMPORTANTLY THAT THIS PARTICULAR
02:06PM 11 JUROR. MY THOUGHT IS TO SHARE THAT WITH YOU AND ASK YOU WHAT
02:06PM 12 YOUR THOUGHTS ARE, AND YOU CAN CONSULT WITH YOUR TEAMS IN JUST
02:06PM 13 A MOMENT ABOUT THAT.

02:06PM 14 LET ME JUST SHARE WITH YOU OTHER SCHEDULING ISSUES.

02:06PM 15 ON APRIL 1ST WE'RE SCHEDULED TO BE IN SESSION, AND I WILL
02:06PM 16 NEED TO TAKE A BREAK FROM ABOUT 10:15 TO 11:30. SO IF YOU
02:06PM 17 COULD MAKE NOTE OF THAT, PLEASE.

02:06PM 18 AND THEN ON MAY 24TH AND 25 I HOPE YOUR SCHEDULES SHOW
02:06PM 19 THAT WE'RE DARK THOSE TWO DAYS.

02:07PM 20 THERE IS ALSO POTENTIAL DISRUPTION, AND I APOLOGIZE IN
02:07PM 21 ADVANCE, IN OUR SCHEDULE THE WEEK OF APRIL 18TH. I DON'T KNOW
02:07PM 22 WHAT THOSE DAYS AND TIMES WILL BE, BUT I'VE COMMITTED MYSELF
02:07PM 23 TO, OUT OF A REQUEST BY THE NINTH CIRCUIT, TO HELP THEM DO SOME
02:07PM 24 THINGS FOR INTERVIEWING PURPOSES, AND I DON'T KNOW WHAT THOSE
02:07PM 25 DAYS ARE RIGHT NOW. THOSE DATES HAVEN'T BEEN SET YET, BUT I

02:07PM 1 WILL LET YOU KNOW AS SOON AS I GET THAT INFORMATION.

02:08PM 2 PLEASE RECALL ONE OF OUR JURORS IS TRAVELLING MARCH 25TH,
02:08PM 3 AND I BELIEVE THEY INDICATED THEY WOULD BE BACK ON THE 30TH.
02:08PM 4 THIS WAS THE WEDDING TRIP, I BELIEVE.

02:08PM 5 WE WERE GOING TO SEE IF POTENTIALLY THEY WERE GOING TO
02:08PM 6 RETURN ON THE 29TH.

02:08PM 7 THE CLERK: THEY'RE RETURNING THE 29TH, SO THEY'LL
02:08PM 8 BE HERE ON THE 30TH, BUT THE 29TH IS A TRAVEL DAY.

02:08PM 9 THE COURT: OKAY.

02:08PM 10 MR. COOPERSMITH: SO ON THAT PARTICULAR POINT,
02:08PM 11 YOUR HONOR, SO THIS FRIDAY, THE 25TH, ARE WE GOING TO BE DARK
02:08PM 12 THAT DAY?

02:08PM 13 THE COURT: IT APPEARS THAT WE WILL BE BECAUSE
02:08PM 14 THAT'S A TRAVEL DAY FOR THIS JUROR.

02:08PM 15 MR. COOPERSMITH: AND THEN ON THE 28TH AND 29TH AS
02:08PM 16 WELL, YOUR HONOR?

02:08PM 17 THE COURT: CORRECT. CORRECT.

02:08PM 18 MR. COOPERSMITH: OKAY.

02:08PM 19 THE COURT: AND I APOLOGIZE FOR THESE LARGE BREAKS.
02:08PM 20 I, I -- PARTICULARLY WITH OUR EXPERIENCE, LARGE BREAKS CAN BE
02:08PM 21 PROBLEMATIC, I RECOGNIZE THAT.

02:09PM 22 BUT I WANTED TO UPDATE YOU ON AT LEAST WHAT I KNOW NOW AND
02:09PM 23 PARTICULARLY AS TO THIS ONE JUROR.

02:09PM 24 MAY I GIVE YOU A MOMENT TO CONSULT WITH YOUR TEAMS?

02:09PM 25 MR. SCHENK: MAY I ASK ONE QUESTION?

02:09PM 1 THE COURT: YES.

02:09PM 2 MR. SCHENK: DID THE COURT RECEIVE ANY TESTING

02:09PM 3 INFORMATION REGARDING THIS JUROR?

02:09PM 4 THE COURT: NO, NO.

02:09PM 5 THE CLERK: NO.

02:09PM 6 MR. SCHENK: COULD WE THEN HAVE THE MOMENT?

02:09PM 7 THE COURT: YES. THANK YOU.

02:09PM 8 MR. COOPERSMITH: ONE OTHER THING. I THINK WE'RE

02:09PM 9 DARK ON MAY 6TH AS WELL; IS THAT CORRECT?

02:09PM 10 THE COURT: I DON'T SHOW THAT.

02:09PM 11 MR. COOPERSMITH: THAT WAS MY SON'S GRADUATION.

02:09PM 12 THE CLERK: I'M THINKING APRIL.

02:09PM 13 THE COURT: YES, YES. OF COURSE.

02:09PM 14 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

02:09PM 15 THE COURT: YES, YES, YES.

02:09PM 16 I THOUGHT YOU WERE ASKING IF I HAD PLANS.

02:09PM 17 MY INVITATION TO YOUR SON'S GRADUATION IS LOST IN THE

02:09PM 18 MAIL, SO I MADE OTHER PLANS.

02:09PM 19 MR. COOPERSMITH: YOU KNOW, YOU'RE WELCOME,

02:10PM 20 YOUR HONOR. I DON'T KNOW THAT YOU WANT TO MAKE THAT TRIP BUT

02:10PM 21 OF COURSE.

02:10PM 22 THE COURT: CONGRATULATIONS. OF COURSE WE'RE DARK

02:10PM 23 THAT DAY. I SEE.

02:10PM 24 YES. SO LET'S TAKE A BREAK, AND YOU CAN CONSULT WITH YOUR

02:10PM 25 TEAMS FOR A MOMENT.

02:10PM 1 MR. COOPERSMITH: OKAY. WILL DO. THANK YOU.

02:10PM 2 (DISCUSSION OFF THE RECORD.)

02:15PM 3 THE COURT: WE'RE BACK ON THE RECORD.

02:15PM 4 MR. SCHENK.

02:15PM 5 MR. SCHENK: YOUR HONOR, I SUPPOSE I'M OF TWO MINDS.

02:15PM 6 FIRST, I THINK IT MAKES SENSE TO BEGIN THE TRIAL TOMORROW,
02:15PM 7 AND THE WAY TO DO THAT IS TO EXCUSE THIS JUROR AND USE OUR
02:15PM 8 FIRST ALTERNATE.

02:15PM 9 I WOULD MORE STRONGLY BE IN FAVOR OF THAT APPROACH IF WE
02:15PM 10 WEREN'T ABOUT TO HAVE ANOTHER GAP. WE HAVE TWO TRIAL DAYS,
02:15PM 11 TUESDAY, WEDNESDAY THIS WEEK, AND THEN WE'RE OFF FOR ANOTHER
02:15PM 12 WEEK.

02:15PM 13 SO I THINK THE IDEA OF SPENDING AN ALTERNATE IF WE WERE
02:15PM 14 ABOUT TO HIT A STREAK OF FOUR OR FIVE, SIX RELATIVELY
02:15PM 15 CONSECUTIVE TRIAL DAYS. WE DON'T HAVE THAT IN FRONT OF YOU US
02:15PM 16 UNFORTUNATELY.

02:15PM 17 WHAT WE HAVE IN FRONT OF US IS TWO DAYS AND ABOUT ANOTHER
02:16PM 18 WEEK, ROUGHLY WEDNESDAY TO WEDNESDAY. I THINK THAT'S THE 23RD
02:16PM 19 TO THE 30TH.

02:16PM 20 SO THAT'S WHAT MAKES THIS A LITTLE BIT OF A HARDER CALL.
02:16PM 21 I THINK I WOULD BE A FULL-THROATED SUPPORTER FOR REPLACING THIS
02:16PM 22 JUROR WITH AN ALTERNATE IF WE DIDN'T HAVE FRIDAY AND TUESDAY
02:16PM 23 OFF, BOTH DAYS STARING US IN THE FACE AT THIS POINT.

02:16PM 24 I STILL WOULD SUPPORT THE IDEA OF REPLACING THIS JUROR
02:16PM 25 WITH AN ALTERNATE BECAUSE WE HAVE TO GET THE TRIAL STARTED. WE

02:16PM 1 ALREADY LOST ONE WEEK. WE TOLD THE JURY 13 WEEKS AND IN THEIR
02:16PM 2 MIND THEY WERE NOT THINKING FROM WHENEVER WE BEGIN THE TRIAL IT
02:16PM 3 WILL BE 13 WEEKS. THEY WERE THINKING FROM WHEN YOUR HONOR SAID
02:16PM 4 13 WEEKS TO THEN FROM ROUGHLY THAT DATE, AND WE DO HAVE SOME
02:16PM 5 CONCERNS ABOUT DELAYING THE START ANOTHER FULL WEEK. THAT
02:16PM 6 PUSHES EVERYTHING FURTHER INTO THE SUMMER WHICH GETS INTO
02:16PM 7 ADDITIONAL TRAVEL PLANS.

02:16PM 8 SO I SUPPOSE THOSE ARE THE THOUGHTS.

02:17PM 9 THE COURT: RIGHT.

02:17PM 10 LET ME --

02:17PM 11 (DISCUSSION OFF THE RECORD.)

02:17PM 12 THE COURT: MR. COOPERSMITH.

02:17PM 13 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

02:17PM 14 I THINK MR. SCHENK SUMMARIZED IT ACCURATELY.

02:17PM 15 THE ADDITIONAL THING, AND I WILL SAY ONE ADDITIONAL THING
02:17PM 16 IS THAT EVEN THOUGH IT IS TRUE THAT WE HAVE THIS GAP BECAUSE OF
02:17PM 17 THE OTHER JUROR'S TRAVEL PLANS, WE DON'T KNOW EXACTLY WHAT THE
02:17PM 18 SITUATION WILL BE WITH JUROR 1, AND WHAT I WANT TO SEE HAPPEN
02:17PM 19 IS THAT WE JUST DECIDE NOT TO REPLACE HIM WITH AN ALTERNATE,
02:17PM 20 AND THEN WE EVEN DELAY MORE TIME.

02:17PM 21 SO I THINK OUR SUGGESTION TO THE COURT IS TO REPLACE JUROR
02:17PM 22 NUMBER 1 WITH THE FIRST ALTERNATE AND PROCEED WITH THE TRIAL
02:17PM 23 TOMORROW.

02:18PM 24 THE COURT: WELL, I THINK BOTH OF YOUR OBSERVATIONS
02:18PM 25 OF OUR SCHEDULE IS ACCURATE, WE JUST HAVE TWO TRIAL DAYS THIS

02:18PM 1 WEEK, TOMORROW AND WEDNESDAY, AND THEN THE WEEK OF THE 28TH WE
02:18PM 2 WOULD HAVE TWO TRIAL DAYS, WEDNESDAY THE 30TH AND THE 1ST, I
02:18PM 3 BELIEVE, AND THEN THE FULL -- THE NEXT WEEK IS THE 4TH, AND
02:19PM 4 THERE'S A SCHEDULED INTERRUPTION FOR THE 18TH, AND WE'RE GOING
02:19PM 5 TO HAVE THAT, AND I DON'T KNOW WHAT THAT SCHEDULE IS.

02:19PM 6 I HAVE NOT YET ASKED OUR JURY, AND IT SEEMS LIKE WE HAVE
02:19PM 7 NOT STARTED THE TRIAL YET, BUT I HAVE NOT ASKED THEM WHETHER OR
02:19PM 8 NOT AN 8:30 START, AN 8:00 O'CLOCK START IS SOMETHING THAT THEY
02:19PM 9 CAN HANDLE. WE MIGHT BE ABLE TO CAPTURE SOME EXTRA TIME DOING
02:19PM 10 THAT, TOO.

02:19PM 11 I NEED TO LOOK AT THE ROSTER TO SEE IF THERE ARE -- I
02:19PM 12 THINK THERE ARE SOME THAT TRAVEL OVER THE HILL. BUT WE'LL LOOK
02:19PM 13 AT THAT.

02:19PM 14 ALL RIGHT. MR. SCHENK, ANY OBJECTION TO THE COURT THEN
02:19PM 15 EXCUSING OUR CURRENT JUROR NUMBER 1 AND REPLACING JUROR
02:19PM 16 NUMBER 1 WITH ALTERNATE JUROR NUMBER 1?

02:19PM 17 MR. SCHENK: NO, YOUR HONOR.

02:19PM 18 THE COURT: MR. COOPERSMITH, SAME QUESTION, ANY
02:20PM 19 OBJECTION TO THE COURT EXCUSING JUROR NUMBER 1 AND REPLACING
02:20PM 20 JUROR NUMBER 1 WITH ALTERNATE NUMBER 1?

02:20PM 21 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

02:20PM 22 THE COURT: ALL RIGHT. THANK YOU.

02:20PM 23 THAT'S WHAT THE COURT WILL DO. JUROR NUMBER 1 IS EXCUSED,
02:20PM 24 AND WE WILL MOVE ALTERNATE NUMBER 1 INTO JUROR NUMBER 1'S SEAT.

02:20PM 25 MADAM CLERK, IF YOU COULD PLEASE CONTACT JUROR NUMBER 1

02:20PM 1 INDICATING AS MUCH, INFORMING AS MUCH, THANKING HIM FOR THE
02:20PM 2 SERVICE, AND ALTERNATE NUMBER 1 AS WELL AS TO THAT ALTERNATE'S
02:20PM 3 ELEVATION.

02:20PM 4 THE CLERK: WILL DO, YOUR HONOR.

02:20PM 5 THE COURT: WHAT ELSE CAN WE ACCOMPLISH TODAY?

02:20PM 6 WE HAVE THE -- COULD YOU REMIND ME AGAIN ABOUT THE MOTION?
02:20PM 7 DID WE RESET THAT? I THINK THERE WERE STIPULATIONS ABOUT
02:20PM 8 SETTING THAT AND MOVING THAT.

02:20PM 9 MR. COOPERSMITH: YES, YOUR HONOR.

02:20PM 10 WE WORKED OUT A BRIEFING SCHEDULE WITH THE GOVERNMENT, AND
02:20PM 11 I BELIEVE THEIR RESPONSE IS DUE TOMORROW, AND THEN THE HEARING
02:20PM 12 IS TO BE SET FOR THE 29TH.

02:20PM 13 SO EVEN THOUGH THAT'S A DARK TRIAL DAY, WE'RE HOPING WE
02:21PM 14 CAN PROCEED WITH THAT AT LEAST.

02:21PM 15 THE COURT: SURE. SURE. LET'S SEE WHAT --

02:21PM 16 THE CLERK: WE HAVE IT SET FOR 10:00 A.M. ON THE
02:21PM 17 29TH.

02:21PM 18 THE COURT: THANK YOU. WE'LL SEE IF THAT STICKS.

02:21PM 19 OKAY. SO I WILL CONTINUE TO UPDATE YOU WITH THE COURT'S
02:21PM 20 SCHEDULE AS SOON AS I GET -- AS SOON AS I HEAR OF ANY CHANGES,
02:21PM 21 BUT I THINK THOSE ARE THE HIGH POINTS FOR NOW.

02:21PM 22 STAY TUNED.

02:21PM 23 MR. COOPERSMITH: OKAY.

02:21PM 24 MR. SCHENK: STAY WELL.

02:21PM 25 THE COURT: YES.

02:21PM

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THE CLERK: COURT IS ADJOURNED.

02:21PM

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(COURT ADJOURNED AT 2:21 P.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: MARCH 21, 2022